

## **The Commando 2012 Pension Scheme Annual Governance Statement by the Chair of the Trustee for the Scheme Year ending on 27 June 2020**

### **Introduction and background**

This statement has been prepared in accordance with regulation 23 the Occupational Pension Scheme (Scheme Administration) Regulations 1996, as amended (the "Administration Regulations") and related guidance from The Pensions Regulator ("TPR").

It relates to the Commando 2012 Pension Scheme ("the Scheme") and covers the period from 28 June 2019 to 27 June 2020.

This statement will be published on a website made available to members.

Consideration has also been given to TPR's 'A quick guide to the chair's statement' and to the Department for Work and Pensions guide on 'Reporting of costs, charges and other information', both published in September 2018.

Matters in relation to the Scheme are considered by a dedicated committee of the Dalriada Trustees Limited ("Dalriada") Board, which meets at least four times a year. However, issues are also considered on an ad hoc basis between committee meetings. The Scheme has a dedicated client manager, alongside a project manager, who ensures anything requiring attention by the committee is communicated, and acted upon, in a timely manner.

As you are aware from the Announcements issued to members since its appointment, Dalriada was appointed as trustee to the Scheme by TPR amid concerns that the Scheme was not being properly run and in order to protect the interests of its membership. The incumbent trustee, Mr Stuart Garner, supported TPR's application to have an independent trustee appointed. This appointment has presented Dalriada with a number of challenges around governance. Nevertheless, this statement is a legal requirement and, as such, can serve as a useful reminder of the issues faced by Dalriada and, where it cannot meet certain governance obligations, I have explained why that it is the case.

Whilst the previous trustee was not removed by TPR, Dalriada was appointed with exclusive powers, to the exclusion of all other trustees. Therefore, Dalriada is effectively the sole trustee of the Scheme.

The Scheme was one of three pension schemes set up as vehicles to provide funding for Norton Motorcycle Holdings Ltd ("Norton"). Norton is a UK based motorcycle manufacturing company located in Castle Donington. The funding was provided by way of the scheme assets being invested solely in preference shares in Norton.

Mr Garner is CEO of Norton and its main shareholder therefore his previous role as trustee was a conflict of interest. The fact that the schemes assets were invested in this way was not permitted under the Regulations that govern the way pension schemes should be run. Dalriada also notes numerous other historical governance failings in relation to the Scheme, many of which are highlighted throughout this statement but include, for example, a failure to prepare annual Trustees' Report and Financial Statements.

Dalriada began working with Norton to better understand the Norton business and its ability to make the necessary payments back to the schemes. Dalriada took the view that attempting to extract funds from the Norton business over the short term would not generate anything close to the total funds due to be recovered. Dalriada supported Norton in a proposed fundraise, which

represented the best chance of the schemes recovering their investments in full. Ultimately however Norton entered into administration.

BDO LLP were appointed on 29 January 2020 as Joint Administrators of Norton and a number of associated companies. Dalriada is in communication with the Administrators, though we are unable to confirm the quantum or timing of any likely return to the schemes.

Dalriada will update members further and on other related matters, in due course, by way of further Announcements.

## **Default arrangement**

A number of requirements of the Administration Regulations relate only to a "default arrangement" as defined in the Occupational Pension Schemes (Charges and Governance) Regulations 2015.

The Scheme does not have a default fund for ongoing accrual. It is not a qualifying scheme within the meaning given by section 99 of the Pensions Act 2008. The Scheme is not used to meet any auto-enrolment obligations and no contributions are being paid into the Scheme.

The Scheme did not, and does not, offer a Default Lifestyle Strategy.

The Scheme did not offer members any choice as to how their funds were invested, albeit Dalriada understands that members knew their funds would be invested in Norton.

Besides the investment detailed above, Dalriada understands no further investments were made. As such, in Dalriada's view, there has never been an appropriate default investment arrangement. There is no life-styling option available.

The previous trustee made investment decisions without seeking appropriate investment advice.

## **Statement of Investment Principles ("SIP")**

Ordinarily, trustees should prepare a SIP, governing decisions about investments. This is a requirement for schemes with 100 members or more.

No serviceable SIP exists for the Scheme. As the Scheme has fewer than 100 members it is not a legal requirement to produce a SIP.

The investments do not comply with any maximum charge requirements.

The Scheme currently holds minimal liquid assets. However, should sufficient assets be recovered on behalf of the Scheme, Dalriada will take appropriate advice to determine a suitable investment strategy. Such a strategy would reflect Dalriada's intention to wind up the Scheme as soon as it is possible, giving members the opportunity to transfer any remaining funds to a more suitable arrangement of their choice.

We understand that annual Trustees' Reports and Financial Statements have not been prepared historically, and Dalriada remains of the intention to rectify this. At present, this is not possible due to the Scheme having minimal liquid assets.

## **Review of default strategy and default arrangements**

There is no default investment arrangement or default investment strategy in place for the Scheme at the current time. As such, there has been no review of the default arrangement or default strategy in the year in question and no previous review for which a date can be given.

## Core Financial Transactions

Trustees have a specific duty to ensure that core financial transactions relating to DC schemes are processed promptly and accurately. These include the following:

- investing contributions in the scheme
- transferring assets related to members into or out of the scheme
- transferring the assets between different investments within the scheme
- making payments from the scheme to or on behalf of the members.

The Scheme does not currently accept contributions or transfers in and is unable to pay any level of benefit, including transfers values, to members at the present time.

This is due to a number of factors, not least uncertainty, to date, as to the value of the Scheme's investments and, in particular, a lack of liquidity. More information has been provided in Dalriada's Announcements to members.

The financial transactions the Scheme would make are, in the main, in relation to costs. However, such transactions cannot be made due to a lack of available assets. Further information will follow in the next section of this statement.

Historically there were issues with regard to making benefit payments, including transfer payments. Dalriada has taken on the administration of the Scheme and will highlight any other material administrative issues in later reports to members, should there be any.

A Pensions Ombudsman Determination of 23 June 2020 concluded, amongst other things, that the previous administrators accepted the role of administrator without having acquired the necessary skills, experience or knowledge to act in that capacity, and without obtaining the necessary training to inform its staff of the requirements of the role of scheme administrator which, together with its failure to report its concerns regarding the Scheme to TPR, amounted to maladministration.

Unsurprisingly, Dalriada has been unable to carry out routine administrative actions subsequent to our appointment for the Scheme over the reporting period. Therefore, there have been no other material administration service issues which need to be reported here.

Notwithstanding this, Dalriada, as a professional independent trustee, has processes and controls in place that are suitably designed to ensure any service objectives can be achieved once the Scheme is in a position to operate in the manner of a normal scheme. Dalriada's administration processes are independently audited and accredited under AAF 01/06 and AAF 02/07.

In addition, acknowledging that we need accurate member data for the processing of member benefits, Dalriada will carry out an analysis of 'common data' and 'scheme specific data' (as defined by TPR). This helps us to ensure the integrity of member data that is processed.

We perform monthly bank account reconciliations for all the schemes to which Dalriada is appointed. The purpose of these reconciliations is to ensure that all transactions processed through the bank accounts (money in and out) can be accounted for. Any transactions which cannot be accounted for are investigated and corrected if required.

We were informed by HSBC that the trustee bank account inherited upon appointment would close on 04 January 2021. We understand that this is at least in part due to a lack of financial activity on the accounts.

Dalriada has now mitigated that issue by opening a new trustee bank account with Barclays. This will be subject to the same monthly banking reconciliations as noted above.

## **Charges and Transaction Costs**

The governance rules require trustees to make an assessment of investment management charges and transactions costs borne by the scheme members and the extent to which those charges and costs represent good value for money for members.

The Trustee has calculated the charges and, so far as they were able to do so, the transaction costs, borne by Scheme members for the Scheme Year.

In this context, "charges" means (subject to some specific exceptions, such as charges relating to pension sharing orders) all administration charges other than transaction costs.

"Transaction costs" are costs incurred as a result of the buying, selling, lending or borrowing of investments.

Dalriada has deviated from the approach set out in the statutory guidance for the reasons set out below.

Since Dalriada's appointment there have been no transactions, as no payments into the Scheme have been accepted, either by way of contribution or transfers-in. As a result, there have been no transaction costs.

Under the terms of its appointment, the fees of Dalriada and its advisers are met from Scheme funds. Whilst these costs (or "charges") fall as debt due from the employer (or sponsor), in this case the sponsor was a dormant company with no assets. It was hoped that Norton would be able to cover Dalriada's costs, however this is now unlikely due to the current status of the company.

Due to the mismanagement of the Scheme by its previous trustee and the subsequent actions taken by Dalriada since appointment, it is inevitable that the Scheme has incurred, and will continue to incur, significantly higher ongoing costs than would be the case for a similarly sized but conventional scheme.

Dalriada assumed trusteeship of the Scheme via a bulk appointment by TPR, when Dalriada was also appointed to two other schemes. All three schemes shared (and continue to share) similar characteristics, such as the previous trustee, administration records and a concentrated investment in Norton. Where work is carried out that has a mutual benefit to all schemes collectively, the costs will be shared across all the schemes. If one of the schemes has no assets, the costs will be met by the other schemes.

During the period in question, trustee services totaling £7,700.27 were provided specifically to the Scheme. In addition, over the period, trustee services totaling £120,106.80 (including VAT) and legal services totaling £55,427.40 were provided to the three schemes collectively.

As none of the schemes currently have funds to meet costs, none of these costs, including the Scheme's share of the collective costs, have been met by the Scheme. If funds become available, these costs may have to be met in the first instance.

## **"Good value" assessment of charges and transactions**

Generally, trustees should assess the extent to which the charges described above represent "good value" for members during the scheme year, by considering the level of member borne charges against the benefits attributable to such charges.

Where something represents good value is not capable of being precisely defined. However, for these purposes, trustees should consider that charges may be viewed as representing good value for members where an optimum combination of cost and quality is achieved for the whole membership, relative to other options available in the market.

The characteristics of the Scheme are unusual and there are no readily available comparators to determine whether the costs incurred represent good value.

However, the actions undertaken by Dalriada, beyond those considered necessary for the appropriate management of the Scheme, are centred on action around recovery of funds.

Such actions are considered on a cost-benefit analysis and, where necessary, Court approval would be sought for the use of Scheme funds to pay for any legal action.

Whilst it was previously intended that there would be additional funds made available to cover all the Scheme's costs, this is now unlikely.

Dalriada was appointed following a tender exercise by TPR and is subject to ongoing oversight by TPR.

Dalriada's costs (both for ongoing management and with regard to action around recovery of funds) are calculated using a blended charging rate. This rate sits well below Dalriada's standard market rates. The trustee's legal advisers operate on a similar basis, albeit on a different charging rate.

As commented above, Dalriada, as a professional independent trustee, has processes and controls in place that are suitably designed to ensure any service objectives can be achieved once the Scheme is in a position to operate in the manner of a normal scheme. Dalriada's administration processes are independently audited and accredited under AAF 01/06 and AAF 02/07.

Once Dalriada is in a position to process member benefit requests these will be managed and monitored in line with Dalriada's standard SLA levels and targets.

Dalriada is required to advise members of the cumulative effect over time of the application of charges and costs on the value of a member's accrued rights to money purchase benefits. However, due to the nature of Dalriada's appointment and the uncertainty as to both Dalriada's and its adviser's fees, as well as the value of the Scheme's investments and other potential recoveries, and how these should then be attributed to the members, this is not possible to do at this time. When Dalriada is in a position to do so, it will advise members.

## **Trustee knowledge and understanding**

The Trustee has considered the latest guidance in relation to Chairman's Statements from TPR and has ensured that its practices reflect the requirements set out. I have set out below how the Trustee ensures it currently meets the knowledge and understanding requirements of trustees.

### ***Dalriada Trustees Limited ("Dalriada")***

Dalriada is an independent professional trustee, established in 2003, which has been appointed by TPR under section 7 of the Pensions Act 1995 to a significant number of schemes. These appointments have been as a result of TPR having concerns about the nature and operation of the schemes and the extent to which the then trustees understood their statutory and fiduciary duties and responsibilities. Dalriada refers to such schemes as "Regulatory Appointments". The Scheme is a Regulatory Appointment.

Dalriada has established a specialist team drawn, from various relevant disciplines within Dalriada to manage the governance of these Regulatory Appointments.

A dedicated committee ("the Committee") has been established by the Board of Directors of Dalriada to oversee the activities of the team in its governance of this Scheme and other Regulatory Appointments. Care has been taken to ensure that the membership of the Committee is such that there is sufficient knowledge and understanding to meet the requirements set out in sections 247 and 248 of the Pensions Act 2004 and TPR's Code of Practice 7 on Trustee Knowledge and Understanding.

I have set out below the membership of the Committee, along with a short summary of their skill set and experience. In addition, it is worth noting that three members of the Committee are directors of Dalriada Trustees Limited.

Dalriada operates a team-based approach, which gives the team access to over 120 pensions and support personnel, with a broad skill set suited to identifying and implementing the variety of tasks required to successfully manage the schemes. This includes pension administration experts, an in-house legal team, fund accountants and investment experts. Whilst the core team deals with the majority of matters arising on the Scheme on a day-to-day basis (in conjunction with its appointed advisers), it can access the specialist expertise of the wider Dalriada team as and when required.

As far as we are aware, no other professional independent trustee firm has established and developed a specialist team in this difficult and challenging area of trusteeship. The relevant experience developed by the team on such cases is unmatched and unrivalled.

## **THE COMMITTEE**

### ***Sean Browes***

Sean has been working in the pensions industry since he graduated in 1988. He worked for two major benefit consultancies in both administration management and consultancy roles, before joining Dalriada in 2003. Sean has a broad range of skills and experience suited to all areas of pension scheme management.

Sean leads the team, dealing with Dalriada's appointments by TPR to schemes suspected of being involved in pension liberation or thought to be scams. He now has a wealth of experience and knowledge with regard to the unique characteristics associated with the administration and management of these types of scheme and the challenges they present.

Sean is a fully accredited member of the Association of Professional Pension Trustees, has completed TPR's Trustee Toolkit and holds the Pensions Management Institute's Certificate in DC Governance and Award in Pension Trusteeship (DC and DB). Sean has met all required CPD requirements.

### ***Neil Copeland***

Neil is a co-founder and director of Dalriada. He acts as an Accredited Professional Trustee on some of our most complex and challenging cases, including our Regulatory Appointments. Neil specialises in schemes with technically challenging governance and covenant issues, as well as having over 25 years of experience in relation to defined benefit, hybrid, defined contribution, multi-employer and sectionalised arrangements.

Neil is the Dalriada Board representative for the team and spends a significant proportion of his time working on Regulatory Appointments. Like Sean, Neil has developed considerable experience of the complex and non-standard issues faced by the Dalriada team in managing the

Regulatory Appointments. This has included acting as a witness in high profile litigation in relation to Regulatory Appointments in support of TPR and representing Dalriada in oral hearings before the Determinations Panel, where Dalriada's appointment by TPR has been challenged by the incumbent trustees or other directly affected parties.

Neil is a fully accredited member of the Association of Professional Pension Trustees, has completed TPR's Trustee Toolkit and holds the Pensions Management Institute's Award in Pension Trusteeship (DC and DB). Neil has met all required CPD requirements.

## **Tom Lukic**

Tom is also a director of Dalriada and leads the Dalriada business across the Midlands. He has broad pensions experience with particular expertise in employer covenant and corporate transactions. He has worked with a range of trustee boards managing scheme assets from c.£5 million to more than £1 billion. Similarly, he is experienced in working with a broad spectrum of sponsoring employers from small, owner-managed businesses through to much larger and complex groups, being either privately owned or fully listed.

Tom's experience, both as an adviser and as an Accredited Professional Trustee, provides particular insight into corporate structures and insolvencies. Where the investments of Regulatory Appointments include shares and/or bonds in, or issued by, corporate entities, an understanding of the accounting and financial structures of these entities is essential and Tom provides a wealth of experience in this area.

Tom is a fully accredited member of the Association of Professional Pension Trustees, has completed TPR's Trustee Toolkit and holds the Pensions Management Institute's Award in Pension Trusteeship (DC and DB). Tom has met all required CPD requirements.

## **Brian Spence**

Brian is a co-founder and director of Dalriada. He is now involved in the provision of a wide range of advice to pension scheme sponsors and trustees. Brian is well-known in the pensions industry for taking a strategic view in dealing with pension scheme matters and uses his experience to deliver practical solutions which satisfy the needs of trustees, employers and other stakeholders. Brian is recognised by TPR and the pensions industry as an expert in dealing with contentious and/or complex issues. He is a lead contact and "key person" for a number of high-profile trustee appointments.

In addition, Brian has practical experience of working as a Professional Trustee in all three major legal jurisdictions of the UK and as a Professional Trustee and advisor in Ireland. Brian has held a UK Scheme Actuary Practising Certificate since inception of the role in 1997.

Brian has an in-depth knowledge of legal processes, particularly around testing points of legal principle related to the operation of pension schemes, often as a result of deficiencies in scheme documentation (a common issue with Regulatory Appointments). He also has experience in litigation involving pension schemes – where it is cost effective to do so, Dalriada will look to take legal action against the perpetrators of a scam with the aim to recover misappropriated assets.

Brian is a fully accredited member of the Association of Professional Pension Trustees, has completed TPR's Trustee Toolkit and holds the Pensions Management Institute's Award in Pension Trusteeship (DC and DB). Brian has met all required CPD requirements.

## **Gino Rocco**

While not a voting member of the Committee, Gino has extensive involvement with the Regulatory Appointments. He performs the role of an Accredited Professional Trustee for Dalriada, focusing on all aspects of pension law for defined benefit and defined contribution pension schemes that range in size from the small to the very large.

A solicitor admitted to practice in England and Wales and a Member of the Association of Pension Lawyers, Gino has over 15 years' experience gained at City and National Firms, as well as a leading pension consultancy practice.

Gino's experience includes complex benefit interpretation issues, scheme equalisation and benefit rectifications. He has detailed experience of pensions issues arising under TUPE transfers and the Fair Deal protections, where employees are transferred from the public (in particular LGPS and NHSPS) to the private sector.

Gino is a fully accredited member of the Association of Professional Pension Trustees, has completed TPR's Trustee Toolkit and holds the Pensions Management Institute's Award in Pension Trusteeship (DC and DB). Gino has met all required CPD requirements.

## ***Knowledge of the trust deed and rules and all documents setting out the trustee's current policies***

The Scheme has a dedicated client manager who has an in-depth knowledge of the Scheme and its governing documentation.

At the point of becoming Independent Trustee to the Scheme, a prescribed take-on process was followed. This included an assimilation and review of all the relevant Scheme documentation, including the trust deed and rules. The Committee is made aware of any issues or risks in relation to the Scheme's trust deed and rules as and when they arise, with appropriate action agreed in relation to the issue or risk identified. In addition to the knowledge held by the client manager and the team, the Trustee obtains legal advice in relation to the Scheme's documentation, where necessary.

There have been no new trustees introduced in this reporting period. However, there is an appropriate induction process in place to support new trustees.

## ***A working knowledge of the current Statement of Investment Principles***

As set out earlier, the Scheme does not have a SIP at this time due to the particular circumstances of the Scheme and its lack of liquid assets.

## ***Sufficient knowledge and understanding of the law relating to pensions and trusts and understanding of the principles relating to the funding and investment of occupational schemes***

Those Dalriada staff working on the Scheme are obliged to self-evaluate their learning and development requirements on an annual basis as part of Dalriada's internal appraisal process. The process identifies how staff can develop their knowledge and understanding, as well as where they can share their expertise in order to best support the Scheme. Dalriada staff are also required to comply with their respective training requirements in order to maintain a required level of continuing professional education ("CPE") and to provide evidence of courses, seminars and other types of professional development to satisfy their respective professional bodies' CPE requirements.

Every Professional Trustee is required to undertake a minimum number of hours training each year. This is recorded centrally by Dalriada's Human Resources Team and, where appropriate, forms part of staff personal development plans. This training can include internal and external

courses and attendance at industry events, as well as a degree of self-learning by way of subscriptions to professional publications and electronic information channels.

Further, every Professional Trustee is required to complete TPR's Trustee Toolkit and subscribes to the updates issued by TPR.

Professional Trustees belong to Dalriada's knowledge management network which keeps them up to date with industry thinking. They also have access to a team of in-house pensions experts who inform the team about changes to pensions legislation and practices.

The trustees have access to Pendragon Perspective and Aries - both industry-leading tools, giving access to pension legislation.

Dalriada has its own in-house legal specialists to provide support and guidance to trustees around legislation and interpretation of scheme documentation. This is further aided by advice from external legal advisers, which is obtained when the Trustee feels this reinforcement is necessary to support their own understanding.

***Combined knowledge and understanding, together with available advice enables the trustees to properly exercise their function***

Dalriada has informally assessed the skill set and experience of each member of the Committee and the client team. It has taken into account the development activities already mentioned, along with the internal resources made available to staff, supplemented, where required, by professional external advice.

The Committee understands the need to more formally assess the skills of its members. This is done using a skills matrix developed for this purpose. Any areas for development flagged during this process will be addressed as part of the individual's personal development plan and reviewed throughout the year.

An evaluation of the effectiveness of the Committee as a whole is also carried out.

I consider that the combined knowledge and understanding of the Committee and the client team enables them to exercise properly their function as trustee of the Scheme. In particular:

- Members of the Committee have the relevant financial knowledge and experience to enable the Trustee to comply with its duties in relation to investment of the Scheme's assets. Tom Lukic's experience (see above) is particularly advantageous in this area.
- There is a vast range of pensions experience and knowledge within the Committee and the client team. This is appropriate to deal with the governance of the Scheme in line with the trust deed and rules, along with other scheme documentation. There is also a great deal of experience relevant to dealing with issues which might be thrown up by the Scheme which require the amendment of scheme documentation.
- Sean Browes, Neil Copeland and Brian Spence have a great deal of knowledge and experience in relation to schemes of complex nature, such as this Scheme. This includes schemes with investments made by previous trustees are deemed to be highly inappropriate, their administration has been poor and / or the previous trustees have not had the sufficient knowledge and understanding to be trustees of an occupational pension scheme.
- Sean Browes and Neil Copeland have many years of experience in the administration of pension schemes, allowing a keen oversight of the administration of the Scheme.

## **Member Representation**

Dalriada is aware that members of the Scheme are potential victims of a scam. As such, we look to keep members informed and to facilitate direct access for members to Dalriada by means of a:

- Dedicated member website;
- Dedicated contact e-mail address; and
- Dedicated phone line.

Signed for and on behalf of Dalriada Trustees Limited (the trustee)

Agreed as final version by the Chair of  
the Trustee of the Commando 2012  
Pension Scheme  
Dated: 27 January 2021